

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Raymond Coll and Deborah Coll
941 Washington Street
Freeland, PA 18224

(b) County of Residence of First Listed Plaintiff Luzerne County, PA

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Stephen A. Seach, Esquire
The Seach Law Offices
53 West Foothills Drive, Drums, PA 18222 (570) 359-3283

DEFENDANTS

CSX Transportation, Inc.

County of Residence of First Listed Defendant Duval County, Florida

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 895 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (Specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC 1332

Brief description of cause:

Defendant placed Plaintiff in zone of danger. Defendant's train struck Plaintiff's work vehicle, causing injury

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ more than 75,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

THE SEACH LAW OFFICES
BY: STEPHEN A. SEACH, ESQUIRE
53 West Foothills Drive
Drums, PA 18222
Pennsylvania Attorney I.D. No.: 67416
570.359.3283
sseach@seachlawoffice.com

Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Raymond Coll and Deborah Coll, his wife
Pennsylvania,

Plaintiffs

vs.

CSX Transportation, Inc.,

Defendant

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:
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:
:
:
:
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JURY TRIAL DEMANDED

Complaint

Plaintiffs, Raymond Coll and Deborah Coll, by their attorneys, The Seach Law Offices, hereby bring this complaint against Defendant, CSX Transportation, Inc., and, in support thereof, aver as follows:

1. Plaintiff, Raymond Coll, is an adult individual, residing in Luzerne County, Pennsylvania.
2. Plaintiff, Raymond Coll, is an adult individual, residing in Luzerne County, Pennsylvania.

3. Plaintiffs have been and are married to each other.

4. Defendant, CSX Transportation, Inc., is a foreign Corporation with a principal place of business in Jacksonville, Florida.

5. CSX Transportation, Inc., regularly conducts substantial business in the Middle District of Pennsylvania.

6. Defendant CSX Transportation, Inc., is in the business of owning and operating railroads.

7. Defendant, CSX Transportation, Inc., owns and operates railroads located in Versailles, Pennsylvania.

8. At all times material, Defendant, CSX Transportation, Inc., had care, custody and control of its railroads in Versailles, Pennsylvania.

9. At all times material, Defendant, CSX Transportation, Inc., had control over who could use its railroads, including those who could conduct work on and near the railroads.

10. Before July 14, 2018, Defendant entered into a contract with DBI Services, LLC.

11. DBI Services, LLC. is a foreign company with a principal place of business in Hazleton, Luzerne County, Pennsylvania.

12. DBI Services, LLC's business includes contracting to perform weed control on railroads.

13. Defendant, CSX Transportation, Inc.'s contract with DBI Services, LLC covered weed control on Defendant, CSX Transportation, Inc.'s railroads including the railroads in Versailles, Pennsylvania.

14. On or before July 14, 2018, Defendant, CSX Transportation, Inc., requested that DBI Services, LLC perform weed control services on the railroads in Versailles.

15. Defendant, CSX Transportation, Inc., knew that DBI Service, LLC's performance of weed control services would require DBI Service, LLC's employee(s) to use Defendant, CSX Transportation, Inc.'s railroads, including entering, using and exiting the railroad with Hi-Rail vehicles.

16. Hi-Rail vehicles are trucks that could be used on roads and highways. They also have gear which, when activated, allows the Hi-Rail to ride on railroads.

17. On July 14, 2018, Defendant, CSX Transportation, Inc., assigned one of its employees, known as a Pilot, to escort a DBI employee on Defendant's railroad in and near Versailles, Pennsylvania.

18. By assigning this employee Defendant, CSX Transportation, Inc., had several responsibilities, including to ensure that its Pilot would be able to provide for the on track safety of roadway workers and be trained, qualified and knowledgeable about the following:

1. All the on-track safety training and qualification required of the roadway workers to be supervised and protected.
2. The content and application of the operating rules of the railroad pertaining to the establishment of working limits.
3. The content and application of the rules of the railroad pertaining to the establishment or train approach warning.
4. The relevant physical characteristics of the territory of the railroad upon which the roadway worker is qualified.

49 C.F.R. §2114.353(a).

19. Defendant, CSX Transportation, Inc., was in radio contact with its Pilot.

20. Defendant, CSX Transportation, Inc., stated over the radio that the railroad to be used by the DBI employee was clear, thereby providing authority for DBI's employee to do his job under the escort of Defendant's Pilot.

21. Defendant, CSX Transportation, Inc., and its Pilot knew or should have known that it would be necessary for the DBI Hi-Rail vehicle to cross and/or be close to Defendant's adjacent rails.

22. As required to do his job, the DBI employee started to position the Hi-Rail vehicle, so that he could get it in position where the gear could be placed onto the rails.

23. Without invitation, warning or explanation, Defendant's Pilot lowered the rail gear, before the Hi-Rail vehicle was in a safe and proper position for the landing gear to be activated.

24. Defendant, CSX Transportation, Inc.'s Pilot knew or should have known that his lowering the rail gear was placing the DBI vehicle within four feet of the adjacent rails and fouling the adjacent track.

25. Defendant, CSX Transportation, Inc.'s Pilot began activating the gear, even though he was not asked to do so and did not have express or implied permission to maneuver the gear on the DBI Hi-Rail vehicle.

26. The Pilot's uninvited interference with and activation of gear caused the DBI Hi-Rail vehicle to be positioned in place, close to the adjacent rail.

27. The DBI driver exited his vehicle to see what the Pilot was doing.

28. As the DBI driver was walking near the back of the Hi-Rail vehicle, he was alerted by a train horn.

29. A train was approaching on the adjacent track.

30. For his safety, the DBI driver sought refuge by running into the cab of the Hi-Rail vehicle.

31. An effort was made to move the vehicle, but it was unmovable in the position directed by the Pilot.

32. The oncoming train, operated by and under the care, custody and control of Defendant, CSX Transportation, Inc., smashed into the DBI Hi-Rail vehicle, and the train's cars continued to strike the DBI Hi-Rail vehicle, until coming to a stop.

33. The crash and continued thumping caused severe and permanent injuries to the DBI driver.

34. That driver was Plaintiff, Raymond Coll.

35. The conduct of Defendant, CSX Transportation, Inc., and its employee caused injuries to Raymond Coll, including, but not limited to the following:

- A. rib fractures;
- B. neck pain;
- C. hip pain;
- D. cervical strain;
- E. lumbar strain;
- F. trauma;
- G. cervical spinal stenosis or the aggravation of it;
- H. upper back pain;
- I. cervical facet syndrome;
- J. lumbar facet arthropathy;
- K. herniation of lumbar intervertebral disc, with radiculopathy and trochanteric bursitis;

- L. radiculitis;
- M. thoracic spine pain cervicalgia;
- N. muscle spasm;
- O. the need for medical treatment including invasive treatment;
- P. nightmares and fright; and
- Q. other injuries and harms to be identified seasonably prior to trial.

36. As a result of the aforesaid injuries, Plaintiff, Raymond Coll, has been rendered sore and disabled and sustained physical and mental pain and great discomfort, and suffering, all of which required, and continue to require, extensive medical care and treatment.

37. As a result of the aforesaid injuries, Plaintiff, Raymond Coll, has suffered physical and mental discomfort, inconvenience, embarrassment and humiliation and is informed and therefore avers, that some or all of the injuries may continue to be permanent in nature and that he will, therefore, continue to suffer in the future, thereby requiring additional medical treatment from time to time.

38. As a result of the aforesaid injuries, Plaintiff, Raymond Coll, has been obliged to receive and undergo medical attention and care and has been obliged to expend and incur various expenses for the injuries he has suffered and will be obliged to continue to expend such sums and incur such expenses for an indefinite time into the future.

39. As a result of the aforesaid injuries, Plaintiff, Raymond Coll, has sustained, and is continuing to sustain, pain and suffering, embarrassment and humiliation, and a loss of the everyday pleasures and enjoyment of life.

40. As a result of the injuries caused by the negligence of the Defendant, Plaintiff, Raymond, sustained lost earnings and lost earning capacity and may in the future sustain wage loss and a loss of earnings capacity.

41. As a result of these injuries caused by Defendant, Plaintiff has been disfigured.

Count I
Plaintiff, Ray Coll v. Defendant, CSX Transportation, Inc.
Vicarious Liability for Pilot's Torts

42. Plaintiff incorporates by reference the previous paragraphs.

43. Defendant, CSX Transportation, Inc.'s Pilot was negligent, reckless and careless, as follows:

- A. By lowering the landing gear of the Hi-Rail vehicle, the Pilot rendered the vehicle stationary, within four feet of the adjacent rails, fouling the adjacent track, and placing Plaintiff, Raymond Coll, in the zone of danger.
- B. Where the original job did not require the fouling of the adjacent track, the Pilot should have warned Plaintiff, Raymond Coll, that the duties would call for fouling of the track or that he intended to initiate otherwise unforeseeable conduct that would render the Hi-Rail vehicle unmovable, in a dangerous location.
- C. The Pilot under those circumstances was required to provide all protection necessary for on-track safety for Plaintiff, Raymond Coll. See 49 C.F. R. §214.315(c).
- D. The Pilot failed to comply with his duties as set forth in 49 C.F.R. §214.315.
- E. The Pilot stopped the DBI Hi-Rail truck, placing it in a zone of danger.
- F. The Pilot touched, maneuvered and activated DBI's gear, without asking Plaintiff for permission or even alerting Plaintiff that he would be doing so.
- G. The Pilot knew or should have known that a train would be coming and should have warned Plaintiff, Raymond Coll, ahead of time, instead of providing a thumb's up, as he did.

44. The carelessness, recklessness and negligence of Defendant's Pilot caused Plaintiff's harm.

45. Defendant, CSX Transportation, Inc., is vicariously liable for its Pilot's negligence, carelessness and recklessness.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant, CSX Transportation, Inc., for compensatory damages and punitive damages, in an amount greater than \$75,000.00

Count II

**Plaintiff, Raymond Coll v. Defendant, CSX Transportation, Inc.
Defendant's Own Negligence, Carelessness and Recklessness**

46. Plaintiff incorporates by reference the previous paragraphs.

47. Defendant, CSX Transportation, Inc. was directly negligent,

careless and reckless, as follows:

- A. Failing to alert its Pilot that a train could be approaching on the adjacent tracks.
- B. Failing to adequately train the Pilot to safely escort Plaintiff, Raymond Coll, under the circumstances.
- C. Disregarding the steps necessary to qualify its Pilot in the necessary areas.
- D. Failing to provide a qualified Pilot to ensure Plaintiff's safety while a worker on its railroad.
- E. Failing to meet the obligations under 49 C.F.R. §214.303 (railroad on-track safety programs, generally.)
- F. Failing to meet its obligations under 49 C.F.R. §343 (training and qualification, general).
- G. Failing to meet its obligations under 49 C.F.R. §214.345 (training for all roadway workers).
- H. Unnecessarily fouling the adjacent track by stopping the DBI Hi-Rail vehicle.

48. Defendant, CSX Transportation, Inc., disregarded safety measures on its railroad, knowing that its train did not have a short stopping distance and that things or people hit by its train will be damaged and injured and that a crash caused by its trains would likely lead to injury or death.

49. Yet, Defendant, CSX Transportation, Inc., intentionally chose to disregard the measures that a reasonably prudent corporation would take under the circumstances and which were necessary for Plaintiff, Raymond Coll's safety.

50. Defendant, CSX Transportation, Inc.'s conduct shows wanton disregard for Plaintiff, Raymond Coll's safety and well-being.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant, CSX Transportation, Inc., for compensatory damages and punitive damages, in an amount greater than \$75,000.00

Count III

Plaintiff, Deborah Coll
v.
Defendant, CSX Transportation, Inc.
Loss of Consortium

51. Plaintiffs incorporate by reference the previous paragraphs.

52. The injuries sustained by the Plaintiff, Raymond Coll, have caused harms to his wife, Plaintiff, Deborah Coll.

53. As a result of the injuries sustained by Plaintiff, Raymond Coll, Plaintiff, Deborah Coll, has sustained a loss of companionship, society and services of her husband from the time of Defendant's negligent and tortious conduct to the present and continuing into the future.

WHEREFORE, Plaintiff, Deborah Coll, demands judgment in her favor and against Defendant, CSX Transportation, Inc., for compensatory damages and punitive damages, in an amount greater than \$75,000.00.

Respectfully submitted,

THE SEACH LAW OFFICES

BY: 

Stephen A. Seach, Esquire
Pa. Attorney I.D. 67416
Counsel for Plaintiffs
53 West Foothills Drive
Drums, PA 18222
570-359-3283
sseach@seachlawoffice.com